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8 **Attorney for Plaintiff**

9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF MONTANA**
12 **HELENA DIVISION**

13 **TINA McCOLL,**

14 **Plaintiff,**

15 **vs.**

16 **ALLIED PROFESSIONALS**
17 **INSURANCE COMPANY,**

18 **Defendant.**

19 **Cause Number CV-17-40-H-SEH**

20 **DECLARATION OF**
21 **ALAN F. BLAKLEY**

22 **STATE OF COLORADO)**
23 **: ss)**
24 **County of Boulder)**

25 **Alan F. Blakley, upon oath, swears and affirms as follows:**

- 26 1. My name is Alan F. Blakley and I make this declaration in support of
27 the Plaintiff's Motion to Compel that seeks attorneys' fees and
28 sanctions due to Allied Professionals Insurance Company's discovery
abuses that caused the Court in the hearing to show cause held
December 15, 2017 to strike the deposition of the insurer's adjuster
Sara Schroeder from the record.
2. I make this affidavit of my own knowledge, information and belief.
3. I am admitted to practice in the courts of the state of Montana and
have been so admitted since 1991. I am admitted to practice in the
State of Colorado, the United States District Courts of Montana,
District of Colorado, the Western District of Michigan, the First,

1 Second, Fourth, Fifth, Sixth, Ninth and Tenth Circuit Courts of
2 Appeals, the United States Court of Federal Claims, the Courts of
3 Appeals for the Federal Circuit and for the Armed Forces and the
4 United States Supreme Court.

- 5 4. I have written more than five books on discovery and numerous
6 articles on discovery in both law reviews and more “popular” legal
7 publications.
- 8 5. In determining an appropriate fee award, Courts first calculate the
9 lodestar figure by multiplying the reasonable hourly rate by the
10 number of hours reasonably expended.
- 11 6. After determining the product of the lodestar calculation, the Court
12 may adjust the award upward based on one or more of the factors set
13 forth in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir.
14 1975). These include:
 - 15 a. The time and labor required to address the discovery abuses.
 - 16 b. The novelty and difficulty of the issues created by the
17 defendant’s misconduct.
 - 18 c. The skill required to perform the task properly.
 - 19 d. The attorney’s inability to accept other work.
 - 20 e. The customary fee for the work.
 - 21 f. Whether attorney is guaranteed a fee for the work.
 - 22 g. The time sensitive nature of the discovery dispute.
 - 23 h. The results obtained.
 - 24 i. The experience, reputation and ability of the attorneys.
 - 25 j. The ‘undesirability’ of the case or the issues.
 - 26 k. The relationship between attorney and client.
 - 27 l. Attorney fee awards in similar cases.
- 28

- 1 7. The Court can also impose an additional amount as sanctions under
2 the Court's inherent power under Rule 1 and under Rule 11, Rule 26
3 and Rule 37, F.R.Civ.P.
- 4 8. I have reviewed the transcript of the deposition of Sara Schroeder, the
5 briefs on the motion to compel and the orders of the Court.
- 6 9. I have also reviewed surveys from the Montana Bar Association
7 concerning hourly attorneys' fees charged in Montana and recent
8 District of Montana cases and find the rate charged by Mr. Angel to
9 be within standard rates.
- 10 10. I am also informed that Mrs. McColl agreed to the hourly rate at the
11 outset of the case.
- 12 11. I also find that the amount of time that Mr. Angel was required to
13 expend dealing with discovery abuses that should never has occurred
14 to be reasonable, if not low. For instances, the first document
15 purporting to be a Privilege Log - - that was not even provided with
16 the discovery responses - - is so scant that it could never satisfy the
17 requirements of the rules. Any Montana licensed attorney would
18 understand this to be an insufficient basis to withhold otherwise
19 discoverable information.
- 20 12. The hourly fee charged for the work performed is the hourly fee
21 contracted between Mrs. McColl and counsel at the outset of the case.
- 22 13. The \$350 hourly fee for a case contingent upon the outcome is
23 reasonable for an attorney with nearly 20 years of experience in the
24 federal district courts of Montana.
- 25 14. The time invested in taking the deposition of Sara Schroeder and
26 briefing the motion to compel were reasonable.
- 27 15. The time and labor required to address the discovery abuses were
28 reasonable and justified given the rancorous conduct of defense

1 counsel both in the deposition and in briefing.

2 16. McColl's counsel was opposed by APIC's four attorneys at the
3 deposition and had to oppose their efforts seeking to thwart
4 discovery.

5 17. The briefing also appears to be the product of at least three of those
6 attorneys and was compounded by less than forthcoming
7 representations to the Court.

8 18. The deponent is a graduate of Harvard Law School and appeared to
9 be skilled in deposition tactics.

10 19. The issues created by defendant's misconduct were hard fought and
11 strenuously defended.

12 20. The skill required to oppose these efforts was significant.

13 21. Counsel could not accept or employ himself on other work because he
14 had a commitment to honor to Mrs. MCColl.

15 22. The fees are within the range of customary fees charged supported by
16 the State Bar of Montana survey on fees and recent decisions of the
17 District of Montana.

18 23. The time sensitive nature of the discovery dispute was heightened by
19 the Court's scheduling order that required discovery disputes to be
20 brought within ten days of the conclusion of the efforts to meet and
21 confer.

22 24. The results obtained justify the costs and fees claimed. But for
23 APIC's conduct and its persistence in refusing to alter its course of
24 conduct, the deposition, motion and hearing would not have been
25 necessary.

26 25. Counsel has a good reputation and is experienced in insurance bad
27 faith litigation.
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